

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 04-CR-172

ANICETO MENDIETA,

Defendant.

ORDER

Defendant in the above matter is charged with conspiracy to distribute 5 kilograms or more of cocaine and various related drug charges. Following his arraignment on March 3, 2006, the case was scheduled for trial on May 30, 2006 and a final pre-trial on May 18, 2006 at 2:30 p.m. Defendant, through his attorney, has notified the court of his intention to enter a guilty plea at the time of the final conference. On May 16, 2006, counsel for the defendant filed a motion to appear at the change of plea hearing via telephone. Counsel claims that he is unable to be present personally because his office is in Corpus Christi, Texas and he has several conflicting “settings” that prohibit him from appearing in person.

Counsel’s request will be denied. In order to satisfy a defendant’s Sixth Amendment right to the effective assistance of counsel, an attorney must be physically present in the courtroom during a plea hearing. *Van Patten v. Deppisch*, 434 F.3d 1038 (7th Cir. 2006). Counsel’s appearing by telephone is of no use and in fact may call into question the validity of any plea that would be entered. In addition, given the length of time that has passed since this hearing was set, counsel’s

failure to arrange his calendar so as to be present is not excusable. For these reasons, counsel's request to appear by telephone will be denied.

I also note in his motion that counsel indicates "local counsel" will be present in court. Assuming "local counsel" is familiar with the case and knowledgeable with the agreement, it may be that he satisfies the defendant's right to an attorney. However, absent agreement by the defendant, retained counsel should be present for the plea hearing.

SO ORDERED this 16th day of May, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge